

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SEALED SEARCH WARRANTS, JUSTIN SMITH.

NOS 4:16-MJ-409-1, 4:16-MJ-555-1
and 4:16-MJ-556-1

**REPLY TO GOVERNMENT’S RESPONSE BRIEF, AND ADVISORY ABOUT
GOVERNMENT’S POSITION AT TELEPHONIC ‘MEET AND CONFER’**

COMES NOW, SETH KRETZER, court-appointed Receiver over JP GP, LLC, and files this Reply brief and Advisory to the Court.

This Court’s order, Doc. No. 45, directs:

The Court further **ORDERS** the parties to confer and to notify the Court by 5:00 p.m. today whether (i) they have reached a resolution of this matter or (ii) Movant’s Opposed Motion for Return of Seized Property, ECF No. 39, still requires action by the Court. In the latter case, Seth Kretzer shall advise the Court whether he intends to file a reply to the Government’s response to his motion.

ADVISORY: THE GOVERNMENT WILL NOT MAKE THE LOGS AVAILABLE FOR COPYING

At 1:00 p.m. today, Counsel spoke to AUSA Martin, who states the Government will still not make the flight logs available because he reads the clause, “orders the parties to confer... if

they have reached a resolution of this matter”, as requiring Justin Smith’s assent insofar as Smith is a ‘party.’

REPLY TO THE GOVERNMENT’S RESPONSE

The problem remains that: 1) Justin Smith has no property interest in the flight logs; 2) since these logs are not in Justin Smith’s possession, Smith cannot ‘resolve’ anything about them; and 3) Doc. No. 39 was brought under Rule 41 of the Federal Rules of Criminal Procedure, which concern the government’s conduct, not that of any private citizen.

The arguments in the Government’s response brief about § 6103(h)(4)(A) are fundamentally mis-positioned, since Justin Smith does not own the flight logs at issue. Nor has Justin Smith ever owned the flights logs at issue. To the contrary, the 2008 Pilatus PC-12 47E is owned by JG GP LLC. The flights logs were kept according to federal regulations on owners of airplanes. Under the turnover order, all property of JG GP LLC belongs to the Receiver.

The Government’s brief avers that it would nevertheless make the logs available pursuant to a court-order: “This Court has authority to authorize the disclosure of return information because this is a judicial proceeding pertaining to tax administration....” Brief, p. 3, n.1. While Receiver cannot agree that a Rule 41 motion to access property he owns *in custodia legis* under a turnover order in Texas state court is in any sense “a judicial proceeding pertaining to *tax administration*” the result of such an Order would be the same in that the Government will make the logs available for copying.

CONCLUSION

The Response brief is correct in the following statement:

Kretzer indicated to the undersigned that he was willing to bear the cost of identifying and copying the flight logs. This would allow the United States to maintain the originals

as evidence. The United States has no objection to allowing Kretzer to have access to the 18 boxes containing the flight logs...

Receiver has always said that he would copy the records at the U.S. Attorney's Office; there will be no effect on the evidential value of any needed originals for a future prosecution of Smith, nor will there be any issues with chain of custody.

The Government should make all files available for review immediately.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that this document was filed on the ECF System on June 15, 2017.



Seth Kretzer